

United States District  
Court of Massachusetts  
< 1st. Circuit >

OFFICE

DATE: 04/25/05 P 1:44

Eric Kelley

# 04-11192-NMG

V.  
Sheriff DiPaulo et. al.

Plaintiffs Motion  
For A State-wide  
Injunction (ruling)  
To Prohibit Pre-  
trial detainees being  
placed in "infamous  
State Prisons."

Plaintiff requests that this Honorable  
Court Order and mandate that the  
defendants (state agents) are Prohibited  
from Placing (this Plaintiff) and all  
other Pre-trial detainees (awaiting trial)  
from being housed in "infamous State  
Prisons" (Punishment Settings).

Attached is Memorandum, History  
and argument.

Eric Kelley (Prose)

## Procedural History

In the early 70's the State and federal Court. found that the conditions of confinement at the Suffolk County jail "Charles St. Jail" were so violative that double bunking could not be enforced, (and later the jail was condemned.) (see: Suffolk Inmates v. Eisenstadt and all related decisions)  
#71-162-G 5/20/73 USDC 1st Cir. \*

\* The County was admonished to send detainees awaiting trial to MCI Concord (a reformatory Prison) if the inmate had done state time before.

Hearings of determination were held by "order of a Superior Court Judge, and the "request of the District Attorney" under MGLA 276 section 52A \*

\* See Exhibit A'

The Commissioner of Correction (opposed) such Placement of pretrial detainees in Concord (or any 'State Prison') based on Due Process of law and countless constitutional Protections.

The <sup>court</sup> identified the 'validity' of the Commissioner's opposition but "temporarily" allowed the Placement of pretrial detainees in MCI Concord (reformatory setting) until "rectification and/or a new jail is constructed". . . . .

The measures taken by the court were temporary and done for security and financial considerations. There was no alternative Placement, therefore it was temporarily sound and justifiable.

## Current Actions

The defendants in this matter, and their state counterparts have miserably violated the courts temporary ordinance and the language of ch. 276 52A

Since 1987 (or so) Middlesex Sheriff and Suffolk County Sheriff take Pretrial detainees that formerly have done state Prison time, and bring them to various state Prisons (not just MCI Concord) but MCI Cedar Junction and MCI Sausa Baronska < maximum security Prisons > at the time of this writing, Plaintiff is in the states highest secure medium / maximum OCCC while awaiting trial, as a Pro-se Criminal defendant. (who needs library access)

Pg #5 \* Denial of his right to prepare a defense.

In his criminal matter (Plaintiff is Pro Se)

Plaintiff filed state and federal Court Pleadings, not to be Placed in a state Prison while awaiting trial. (see docket 03-10726 Suffolk)

The Suffolk Counties Sheriffs Office, in unison with these defendants sent advocates to argue that plaintiff should be placed in the (Concord Prison)

Judge Carol Ball held said hearing on/about March 29th. 2005.

Because the defendants ensured constitutional and physical protections and adequate law\* library access for this plaintiff who is Pro Se in his criminal matter.\* Judge Ball made the following decree:

\* those protections were not met.

"If I do it for you  
Mr. Kelley, I'd have to do  
it for everyone"

The Judges decision was  
rendered on financial concerns,  
the rectification of law that would  
result in an "Exodus" of  
liberated 52A detainees state  
wide. No Principles of law  
were discussed by the defendants  
or her Honor. Only this plaintiff  
set forth grounds that were not  
opposed, contested or disputed  
by <any> Present Parties.  
that being: The Judge, ADA  
defendants counsel.

\*note (Kelley had stand-by counsel Atty. Buck)  
and Atty. Eva Clark "friend of the court"  
Present on his behalf.

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Judge Ball Allowed "Placement in MCI Concord" but the defendants and co-horts placed him in OCCC (maximum security) and mandated further placement in SBCC or MCI Cedar Junction < the State Prison Systems highest security Prisons >.

Because of the Plaintiff's legal knowledge and limited ability to plead, he was at least given the bare requirements of Ch. 276 Sect. 52A (a hearing) but countless other detainees, with no advocacy or legal knowledge are being and have been violated. (they received no hearings)

\* note MCLS / <sup>Atty. Petit</sup> Atty. Walker support the defendants and the [State] Kelley seeks to have the U.S. Subcommittee and other administrations review them for conflict of interest.

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## Analysis / Memorandum Argument (consolidated)

An Injunction (ORDER) is necessitated;

Inmates (detainees) have and will continue to suffer irreparable harm.

Some detainees have been beaten, stabbed and seriously sexually accosted when (mingling and living in the same Population as convicted felons).

The injury outweighs the harm if not granted.

At some level (USNC Appeal or U.S. Supreme) Plaintiff will succeed on the merits of this argument.

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An injunction would not adversely affect Public interest, it would only ensure Public Safety. (detainees are citizens with a Presumption of innocence).

See:

Planned Parenthood v. Bellotti  
641 f2d. 1006, 10009 (1st. Cir. 1981)

Weaver v. Henderson 984 f2d. 11  
(1993 1st. Cir)

No other federal Jurisdiction in the United States allows Pre-trial detainees to be housed and interacted with convicted felons. In a "Punishment Setting"

"Due Process requires that a Pre-trial detainee not be Punished"

See: Bell v. Wolfish 99 S.Ct. 1861 (1979)

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There is a "distinction" that the court recognizes under the 8th Amend.

See: Ingraham v. ~~Wright~~ Wright  
430 U.S. 651-672 n. 40, 97 Sct.  
1401-1413 n. 40, 51 L.Ed.2d. 711  
(1977)

"With respect to Pre-trial detainees," the court held that because they are "presumed to be innocent and held only to ensure their presence at trial, any deprivation or restriction of rights of confinement (consistent with punishment of convicted felons) alone, must be justified by compelling necessity."

Quoted See: Detainees of Brooklyn  
v. Malcolm 520 F2d. 392, 397 (CA2 1975)

Also: Wolfish v. Levi 439 F. Supp.  
~~397, 398~~ ~~CA2 1977~~ 114, 124 (1977)

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"To house an inferior minority of persons amounts to cruel & unusual Punishment." See:

Wolfish v. U.S. 428 F Supp. 333, 339 (1977)

These types of action "further violate Admin. Procedure Act" (APA)

The Presumption of Innocence Rule, has been modernized and made much more stringent to support founding rulings.

See: Campbell v. McGruder 188 U.S App 258, 266, 580 f2d. 521, 529 (1978)

Feeley v. Sampson 570 f2d. 1077 1080 n 1 (CA3 1976)

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The Bell v. Wolfish standard  
records a historical challenge;

Bell v. Wolfish 441 U.S. 520  
535, 99 S.Ct. 1861, 1872 60 L.Ed.2d  
447 (1979)

The ruling "Screams volumes"  
that detainees can not be subjected  
to 'Punishment'

Placement in a State Prison  
(which was designed and constructed  
for the purpose of punishment)  
while detainees are "far from home"  
when their county jails have room  
serve no legitimate governmental  
objective and amounts to Punishment  
See: Kennedy v. Mendoza 372  
U.S. 144 83 S.Ct. 554, 9 L.Ed.2d 644  
(1963)

13)

## Legal Conclusion

In Brown v. Comm. 394 Mass.  
89 ~~700~~ 474 NE2d. 1059

The court ruled that the state  
 can not house even a <convicted>  
 District Court sentenced inmate  
 to anywhere other than (Concord)  
 So how can an unconvicted  
 pre trial detainee be lawfully placed  
 in an "infamous" setting / Prison.

The gist of the "Brown v. Comm."  
 case is found in the 4th. Paragraph

" Punishment in a state Prison  
 is an infamous punishment and  
CAN NOT be imposed without

< BOTH > an indictment and

TRIAL BY JURY " Id. at 349

14)

Therefore, a Pretrial  
 detainees confinement in  
 Concord (no longer a reformatory Prison)

highest medium > Old Colony Correctional Center (OCCC)

maximum > MCI Cedar Junction (Walpole)

maximum > Souza-Baronowski Corr. Center (SBCC)

is Sullogistically a Punishment  
 that violates the very framework  
 of incarceration outlined in

Jones v. Robbins, 8 Gray 329  
(1857)

All in violation of Article 12.

for these reasons <Every> Pretrial  
 detainee in a State Prison, having not  
 been adjudged guilty, must be  
 remanded back to their respective  
 county jails to await trial.  
 per. Order of this Honorable Court

## "Punishment" Standard

pg #15>

"Article 12 prohibits" placing a criminal defendant in state prison without "(indictment & conviction)"

"To transfer a criminal defendant to MCI Walpole (Shirley maximum, old colony super medium)" at a date  
<Subsequent> TO SENTENCING  
would seriously [394 Mass. 93]  
undermind the protection afforded by Article 12 "

See: Brown v. Comm.  
394 Mass. 89 474 NE2d. 1059

Quoted verbatim [2] [3]

Gen. law. c. 127 sec. 97 as appearing in St. 1968 c. 627 provides,

"Prisoners so removed shall be subject to their (original sentences) and laws governing (parole)" Not DETAINEES !!!!!!!!!

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## Punishment (cont.)

This plaintiff spent from 15-30 days in Segregated Units. (non-stop). (see Amended complaint in this case.)

Prior to his release on his last Prison Sentence) Feb. 01 the Plaintiff was charged with A & B during a Prison altercation. It is that (former) charge that the defendants are using (along with his D.O.C. classificational (6-Part folder))\* that has inspired Placement in maximum security. Plaintiff is at the time of this complaint and continually being (Punished) for his Previous incarceration <again> (while unadjudged guilty as a detainee)

\* Karen Dinardo (MCI classification/concord) & Carol Lawton (Deputy of classification/OCCC) > made these assertions

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The Plaintiffs treatment is worse than that of convicted felons within the confines of the same institutions.

" Pretrial detainees retain the rights afforded unincarcerated individuals. they are Protected by the temporary Standards of decency clause of the 8th. Amendment ".....

Due Process requires they be subject to only those restrictions and Privations "

See: Bell v. Wolfish 99 Sct. 1861  
Rhem v. Malcolm 507 f2d. 336  
(above Ludra)

" Due Process requires that Pre-trial detainees not be punished

See: Ingraham v. Wright 430 U.S. 651  
97 Sct.

B #18 >

Bell V. Wolfish

Has  
Emphasis<sup>s</sup> what Middlesex  
and Suffolk County do and  
have done on a daily basis  
(consistently) Since 1988,

" loading a detainee with chains  
and shackles and throwing him  
into a dungeon " I.D. at 539 n.20  
99 S.Ct. at 1874 n.20

What constitutes a dungeon?  
Simply a punishment setting  
designed for the cruelest of  
convicted and condemned law  
breakers. A maximum security  
Prison is a modern day dungeon,  
and pretrial detainees are without  
the guilty finding of a tribunal's  
mandate and sentencing.  
Only Massachusetts is exploiting  
these unconstitutional violations.

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Stringer v. Rowe 616 f2d 993

\*500\_ (FN13.) Although Stringer was concerned with treatment of convicted persons rather than with pretrial detainees and thus involved the Eighth Amendment rather than the Due Process Clause, it is relevant here because any action that would violate the Eighth Amendment as cruel and unusual punishment would obviously constitute punishment which may not be imposed upon pretrial detainees without violating their due process rights.

Dept. of Corrections do NOT  
Keep the pretrial detainees  
seperated from the convicted  
felons.

[8] Appellees do not dispute the fact that the safekeepers in the A & O Unit are subject to significantly different and more restrictive conditions of confinement than those applied to the general prison population. Although the conditions of safekeepers on the A & O Unit appear substantially similar to the conditions of convicted prisoners on that unit, that similarity is insufficient to defeat plaintiffs' equal protection arguments. Absent a rational justification of the different treatment, there is a violation of equal protection when pretrial detainees are held in more burdensome conditions of confinement than convicted offenders in the same institution. The defendants argue that the safekeepers are held at the prison for much shorter periods of time than are the convicted felons and that the situation of the safekeepers justifies the different treatment. Defendants argue further that keeping the safekeepers in the A & O Unit is justified by the needs of keeping them separate from convicted persons, preserving internal order, and effectively managing the institution.

above  
supra > LOCK v. Jenkins 641 f2d. 488 (Ind. 1981)

. Brief of appellees at 43. As the Second Circuit indicated in *Rhem v. Malcolm*, 507 F.2d 333 (2d Cir. 1974), "The demands of equal protection of the laws and of due process ... prevent unjustifiable confinement of detainees under worse conditions than convicted prisoners." *Id.* at 336. See also, *Inmates of Suffolk Co. Jail v. Eisenstadt*, 360 F.Supp. 676, 686 (D.Mass.1973) *aff'd* 494 F.2d 1196 (1st Cir.), *cert. denied sub nom. Hall v. Inmates of Suffolk County Jail*, 419 U.S. 977, 95 S.Ct. 239, 42 L.Ed.2d 189 (1974); *Jones v. Wittenberg*, 323 F.Supp. 93, 99-100 (N.D. Ohio 1971), *aff'd sub nom. Jones v. Metzger*, 456 F.2d 85 (6th Cir. 1972); *Brenneman v. Madigan*, 343 F.Supp. 128, 138 (N.D. Cal. 1972); *Seal v. Manson*, 326 F.Supp. 1375 (D.Conn.1971); *Tyler v. Ciccone*, 299 F.Supp. 684 (W.D. Mo. 1969).

State prisoners in the same facilities are allowed  
Paying jobs, t.v.s. radios, sweat cloths, sentence reduction  
dental care and mental health (priority)

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In the only known case where Pre-trial detainees were sanctioned / allowed by the court to be in State Prisons was Lock v. Jenkins (641 f2d. 488 (Ind. 1981))

and the detainees known as "Safe Keeps" did not interact with the convicted felons and were deemed security risks at the County (through Judicial and Administrative Due Process.)

(FN2.) Ind.Code s 35-2.1-1-1 (1971). These pretrial detainees are sent to the prison primarily for medical or security reasons. Typical non-medical reasons for sending pretrial detainees to the prison were that jail officials considered the detainees to be in danger from or a danger to other detainees. One safekeeper had previously escaped from county jails. The average length of confinement of safekeepers at the prison was two months. Several pretrial detainees stayed at the prison for much longer than two months; one was a safekeeper for three years. One hundred and nine men were confined at the prison as safekeepers in the period from November 1, 1974 to October 2, 1978.

In a four year period mass has housed over 10,000 inmates until even that placement was found to be unconstitutional. (in 1978)

In a time when courts gave prison officials

a1)

## Conclusion

Massachusetts (defendants)

Placing Pre trial detainees in State Prisons are done for the Sole monetary Pleasure of the governing defendants.

There is no legitimate governmental purpose. The counties have an abundance of space, units, cells, land and adequate housing to hold their own detainees in their jurisdictions.

There is no compelling necessity to justify practices which violate the constitution and its sanctimonious standing on the Presumption of innocence.

Budgetary restraints do not justify constitutional violations  
See: Brief for NAACP as Amicus  
18 USC sec. 4042(2)

aa)

"The effect of the Court's opinion is to  
own admission the "State" since 1979  
they Preordained State prison placement (retaliation)  
if they say they did not, the plaintiff will prove it  
at trial."

"The federal Court is  
bound with inherent  
authority to correct  
issues regarding Pre trial  
detainees' confinement"...

Knetzsch v. U.S. 364

U.S. 361. 370 81 Sct.

132. 137 5 Led. ad. 128  
(1960)

An Injunction and  
Permanent ORDER to  
have all pre trial detainees  
in a "infamous" State Prison  
OCCC, SBCC, Walpole, Concord  
Norfolk relinquished back to  
their respective County  
Jurisdictions.

Respectfully  
Eric Kelley (Pro se)

Procedural History  
Temporary Decree  
to the Concord (Reformatory)  
Prison

See Also: Inmates v. Kearney 734 f.supp.  
561, 564 (Dc Mass. 1990)

EXHIBIT "A"

↓ In *Rufo v. Inmates of Suffolk County Jail*,<sup>72</sup> state officials sought to modify a consent decree previously entered into, that had resulted from constitutionally deficient conditions at the facility known as the Charles Street Jail. The terms of the program set out in the decree were designed to include 309 single-occupancy rooms. By the time construction began in 1984, the inmate population had outpaced population projections. The state officials were then ordered to build a larger jail. The number of cells was later increased to 453 with construction beginning in 1987. In 1989 the sheriff moved to modify the consent decree to allow double-bunking in a portion of the cells to raise the capacity of the new jail to 610 male detainees. The federal district court supervising the consent decree applied the standard of *United States v. Swift & Co.*<sup>73</sup>

\* [ Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned.<sup>74</sup> ]

The district court stated that because a separate cell was an important element of the original relief sought, a more flexible standard would not be available to the sheriff. In moving to modify the decree, the sheriff relied on Federal Rule of Civil Procedure 60(b)(5) and (6), which in part provides that a court may relieve a party from a final judgment, order, or proceeding for the reason that the judgment has been satisfied, or it is no longer equitable that the judgment should have prospective application, or if there is any other reason justifying relief from the operation of the judgment.

The sheriff asserted that modification of the decree would improve conditions by cutting down on transfers of detainees away from the area where their family members and legal counsel were located. Further, in the transfer facilities the detainees would be double-celled in less desirable conditions. Finally, the public interest would be served by such modification because fewer releases and transfers to halfway houses would be necessary and thus fewer escapes would occur.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

\* This Motion  
was  
Allowed

Hampden, ss

Hampden Superior Court  
Indictments 00-1511 1-6

COMMONWEALTH )  
v. )  
DAVID TUTTLE )  
MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR REMAND TO HOUSE  
OF CORRECTION  
HAMPDEN COUNTY  
SUPERIOR COURT  
**FILED**

FEB 22 2002

STATEMENT OF THE CASE

Defendant David Tuttle was transferred to MCI Cedar Junction from the Hampden County House of Correction on January 9, 2002, from the Hampden County House of Correction, where he was awaiting trial in this matter. His bail is \$100,000, and he is not under sentence.

*Daniel Shugra*  
CLERK-MAGISTRATE

There is no Court order sanctioning Mr. Tuttle's removal from the House of Correction to MCI Cedar Junction. Mr. Tuttle is represented by the same attorney today and no notice was ever provided to this attorney of

October 31, 2001